

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:

Agriliance LLC
215 N. Summer Street
West Burlington, Iowa 52655

EPA ID No. IAD 022034433

Respondent.

Proceeding under Section 3008 (a) and (g) of
the Resource Conservation and Recovery Act,
as amended, 42 U.S.C. § 6928(a) and (g).

CONSENT AGREEMENT
AND FINAL ORDER

Docket No. RCRA-07-2002-0102

I. PRELIMINARY STATEMENT

This proceeding was initiated on or about March 29, 2002, when the United States Environmental Protection Agency, Region VII ("Complainant" or "EPA") issued a Complaint, Compliance Order and Notice of Opportunity for Hearing ("Complaint") to Agriliance LLC. Pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984 (hereinafter known as RCRA), Title 42 United States Code (U.S.C.), Section 6901 *et seq.*, the Complainant sought civil penalties for alleged violations of 42 U.S.C. § 6925 and 40 Code of Federal Regulations (C.F.R.), Parts 262 and 265.

The Complainant and Respondent subsequently entered into negotiations in an attempt to settle the allegations contained in the Complaint. This Consent Agreement and Final Order (CAFO) is the result of such negotiations and resolves all issues relating to the administrative claims arising from the allegations in the Complaint.

II. CONSENT AGREEMENT

1. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order. The terms of this Consent Agreement and the Final Order shall not be modified except by a subsequent written agreement

between the parties.

2. Respondent admits the jurisdictional allegations of the Complaint and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order set forth below.
3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in the Complaint.
4. Respondent waives its right to further contest the factual allegations and legal conclusions set forth in the Complaint in this or subsequent proceedings to enforce the terms of this Consent Agreement and Final Order, and agrees not to appeal the Final Order set forth below.
5. Respondent explicitly waives its right to a hearing on any issue of fact or law set forth in EPA's Complaint.
6. Respondent and EPA each agree to bear their own costs and attorneys' fees.
7. Respondent agrees that, in settlement of the claims alleged in the Complaint, Respondent shall pay a mitigated civil penalty of \$41,528 as set forth in Paragraph 15 of the Final Order and shall perform two Supplemental Environmental Projects ("SEPs") as set forth in paragraphs 23 through 32 of the Final Order. The projected total cost of the SEPs is approximately \$31,000.
8. Respondent certifies that the SEPs are not necessary or required to achieve compliance with any federal or state environmental requirements. Respondent has proposed and agreed to undertake the SEPs in consideration of the violations of RCRA alleged by EPA in the Complaint.
9. Respondent agrees that whenever it publicizes the SEPs in a formal presentation, or the results of the SEPs in formal writings, it shall state in a prominent manner that the SEPs are being undertaken as part of the settlement of the Complaint.
10. The performance of the SEPs according to the terms set forth in the Final Order below shall not relieve Respondent of its responsibility to comply with other applicable state and/or federal statutory and regulatory requirements.
11. Respondent agrees to pay any stipulated penalties as set forth in Section D of the Final Order.
12. This Consent Agreement and Final Order shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA Region VII. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

13. This Consent Agreement and the Final Order shall remain in full force and effect until Complainant's representative designated in Paragraph 20 of the Final Order provides Respondent with written notice, in accordance with Paragraph 44 of the Final Order, that all requirements hereunder have been satisfied.

14. Each signatory of this Consent Agreement and Final Order certifies he or she is fully authorized to enter into the terms of the Consent Agreement and Final Order.

III. FINAL ORDER

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and according to the terms of the Consent Agreement set forth above, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

15. Within thirty (30) days of the effective date of this Final Order, Respondent shall pay a mitigated civil penalty of \$41,528.

16. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer of the United States" and remitted to:

Regional Hearing Clerk
United States Environmental Protection Agency
Region VII
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251

The Respondent shall reference the Docket Number, RCRA-07-2002-0102, on the check. A copy of the check shall also be mailed to:

Alex Chen
Office of Regional Counsel
United States Environmental Protection Agency
Region VII
901 N. 5th Street
Kansas City, KS 66101

17. Failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with

interest thereon at the rate of five percent (5%) per annum.

18. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

B. Compliance Actions

19. Respondent shall take the following actions within thirty (30) days following the effective date of the Final Order, according to the terms and conditions specified below:

- a. Provide to EPA documentation which states the job title and name of employees engaged in hazardous waste management at the West Burlington, Iowa facility ("the Facility"); states the written job description for these employees, including skills, education, qualifications, and duties; states the written description of the type and amount of continuing training provided; and confirms that introductory and 2002 annual training has been completed, as required by 40 C.F.R. § 265.16.
- b. Provide evidence (e.g., photographs) to EPA demonstrating that all containers and tanks then storing hazardous waste have been properly labeled "Hazardous Waste," and that all containers then storing hazardous waste have been dated with the accumulation start date.
- c. Identify and if necessary, clean up any existing releases of hazardous waste in the Damage Room in Warehouse #4, and in the product storage area, that were observed during the September 2000 EPA inspection at the Facility.
- d. Submit a list of all solid waste streams managed at the Facility to EPA. In addition, for each such solid waste stream generated at the Facility, Respondent shall submit documentation to EPA, demonstrating that an accurate hazardous waste determination has been performed, in accordance with the requirements of 40 C.F.R. § 262.11. This documentation will include, but is not limited to, the following information:
 - i. a description of the waste stream, which includes a detailed description of the process or processes that generated the waste;
 - ii. a determination of whether or not the waste has been excluded from regulation under 40 C.F.R. § 261.4;
 - iii. a determination of whether or not the waste has been listed in Subpart D of 40 C.F.R. Part 261; and

- iv. a determination of whether or not the waste is identified in 40 C.F.R. Part 261 Subpart C. To determine whether the waste fails any of the characteristics in Subpart C, the waste may need to be analyzed using the procedure set forth in Subpart C of 40 C.F.R. Part 261, or by applying knowledge of the waste characteristics based upon the material or processes used. Any laboratory analyses used to make this determination must be provided to EPA. If Respondent elects to apply knowledge of the process to make the waste determination, please provide a detailed explanation and reasoning regarding the basis for this determination.

20. Respondent shall submit all documents and other correspondence required to be submitted to EPA by this Final Order to:

Kori Kuehl
Air, RCRA and Toxics Division
U.S. Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas 66101

21. EPA shall submit any notices or correspondence related to this Consent Agreement and Final Order, if needed, to:

Agriliance LLC
c/o Kent Kutnink
1170 West 152 Highway, Suite I
Liberty, Missouri 64068.

22. The EPA will review each submission of a plan or report by Respondent, and notify Respondent in writing of EPA's approval or disapproval of the plan or report, or any part thereof. If a submission is disapproved in whole or in part by EPA, EPA will provide written comments to Respondent explaining the basis for its decision. Within thirty (30) days of receipt of EPA's comments pertaining to any submission, or within such longer time as the Parties may agree, Respondent shall amend/revise the disapproved submission, addressing all of EPA's comments, and resubmit same to EPA. If EPA disapproves the revised submission, EPA may modify and approve the same in accordance with its previous comments. In the event of such modification and approval, EPA will notify Respondent of the modification/approval.

C. Supplemental Environmental Projects

23. In response to the violations of RCRA alleged in the Complaint and in settlement of this matter, although not required by RCRA or any other federal, state or local law, Respondent agrees to implement the following two supplemental environmental projects (SEPs).

Project #1: Rinse Water Handling Improvement Project

24. Respondent agrees to implement a rinse water handling improvement project at its facility designed to reduce the volume of hazardous waste generated. Respondent shall install a new rinse water tank as well as associated diking, plumbing, filter and pump equipment to separate the rinse waters by type of product. Associated with the operation of this new project, Respondent agrees to undertake monitoring and recordkeeping and to submit certain reports to EPA, as described below.

25. Respondent shall expend a minimum of \$23,143 in approvable costs to perform the rinse water handling improvement project. Approvable costs shall only include specific costs approved by EPA that are directly related to the design, installation and operation of the project pursuant to the requirements of this Final Order.

26. Respondent shall begin implementation of this project on or before February 28, 2003 and complete the project no later than January 31, 2004. Beginning with the effective date of this Order and continuing until the project has been completed, Respondent shall submit quarterly status reports to EPA (on or before May 31, 2003; August 31, 2003; and November 30, 2003). Such reports shall provide the status of the project, along with any encountered problems and/or expected delays. Respondent shall provide notice to EPA when installation of the rinse water handling improvement project has been completed.

27. Within sixty (60) days from the completion of the rinse water handling improvement project, Respondent shall submit to EPA a Final SEP Report. This report shall provide a detailed description of the SEP as implemented and estimate the measurable reduction in pollutants generated and/or reduction in pollutants released to the environment as a result of the SEP. The report shall also document all approvable costs incurred in the purchase, installation, and operation of the rinse water handling improvement project.

Project #2: Secondary Containment Enhancement Project

28. Respondent agrees to implement a secondary containment enhancement project at its facility to enhance a barrier between potential spills or leaks from facility operations and environmental media. Respondent shall apply an epoxy resin seal after washing and etching the concrete in the facility's wash, fill and tote area. The seal will facilitate cleanup after unanticipated spill or leak events by preventing chemical materials from soaking into the concrete

and leaving residual material.

29. Respondent shall expend a minimum of \$8,140 in approvable costs to implement the secondary containment enhancement project. Approvable costs shall only include specific costs approved by EPA that are directly related to the design, installation, and operation of the project pursuant to the requirements of this Final Order.

30. Respondent shall begin implementation of this project on or before March 15, 2003 and complete the project no later than March 31, 2003. Respondent shall provide notice to EPA when installation of the secondary containment enhancement project has been completed.

31. Within sixty (60) days from the completion of the secondary containment enhancement project, Respondent shall submit to EPA a Final SEP Report. This report shall provide a detailed description of the SEP as implemented and estimate the measurable reduction in pollutants generated and/or reduction in pollutants released to the environment as a result of the SEP. The report shall also document all approvable costs incurred in the purchase, installation, and operation of the secondary containment enhancement project.

32. EPA and its authorized representatives shall have access to Respondent's West Burlington, Iowa facility at all reasonable times, to monitor Respondent's implementation of both SEPs and performance of required compliance actions. Nothing herein shall be construed to limit EPA's access authority under RCRA or any other law.

D. Stipulated Penalties

33. In the event Respondent fails to satisfactorily complete the Rinse Water Handling Improvement Project identified in paragraphs 24 through 27 above, then pursuant to the EPA's SEP Policy, the Respondent shall pay a stipulated penalty not to exceed \$19,537. In the event the Respondent satisfactorily completes the SEP, but fails to spend at least 90% of the amount required for Total SEP Expenditures, the Respondent shall pay a stipulated penalty not to exceed \$1,563.

34. In the event Respondent fails to satisfactorily complete the Secondary Containment Enhancement Project identified in paragraphs 28 through 31 above, then pursuant to the EPA's SEP Policy, the Respondent shall pay a stipulated penalty not to exceed \$6,320. In the event the Respondent satisfactorily completes the SEP, but fails to spend at least 90% of the amount required for Total SEP Expenditures, the Respondent shall pay a stipulated penalty not to exceed \$506.

35. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be within the sole discretion of the EPA.

36. Respondent shall pay any stipulated penalties within thirty (30) days after the date of receipt of a written demand from EPA for payment. The method of payment shall be in accordance with the provisions of Paragraph 16 of the Final Order. Interest and penalty on any failure to pay a demanded stipulated penalty shall be calculated in accordance with Paragraph 17 of the Final Order.

E. Parties Bound

37. This Final Order shall apply to and be binding upon EPA and Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

F. Reservation of Rights

38. This Consent Agreement and Final Order addresses all administrative matters alleged in EPA's March 29, 2002 Complaint, Docket No. RCRA-07-2002-0102. EPA reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

39. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of the Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed twenty-seven thousand five hundred dollars (\$27,500) per day per violation pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.

40. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this Consent Agreement and Final Order.

41. Except as expressly provided herein, including the provisions of Section E of this Consent Agreement and Final Order, nothing in this Consent Agreement and Final Order shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants or contaminants found at, taken to, or taken from Respondent's facility.

42. Notwithstanding any other provisions of the Consent Agreement and Final Order, an

enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the future handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

43. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

44. The provisions of this Consent Agreement and Final Order shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order to EPA's satisfaction.

For the Respondent:

Darrell Forkrud

Name: Darrell Forkrud

Printed Name

Title: Director of Operations

2-27-03
Date

For the Complainant:

The United States Environmental Protection Agency

Alex Chen

Alex Chen

Assistant Regional Counsel

3-4-03
Date

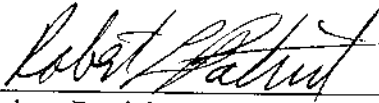
William A. Spratlin

William A. Spratlin, Director

Air, RCRA and Toxics Division

3/4/03
Date

IT IS SO ORDERED. This Final Order is effective upon its final entry by the Regional Judicial Officer.



Robert Patrick
Regional Judicial Officer

March 4, 2003
Date

IN THE MATTER OF Agrilience LLC, Respondent
Docket No. RCRA-07-2002-0102

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Alex Chen
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

CT Corporation System
Registered Agent
Agrilience LLC
2222 Grand Ave.
Des Moines, Iowa 50312

Thomas J. Wilcox, Esq.
Director and Environmental Counsel
Farmland Industries, Inc.
12200 North Ambassador Drive - Dept. 141
Kansas City, Missouri 64163

and

Copy by FAX and First Class Pouch Mail to:

The Honorable William Moran
Administrative Law Judge
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W./Mail Code 1900L
Washington, D. C. 20460

Dated: 3/4/2

Kathy Robinson by Debby White
Kathy Robinson
Regional Hearing Clerk